

Appl. No. 10/005,810
Amdt. Dated March 9, 2005
Reply to Office Action of December 9, 2004

REMARKS

This is a response to the Office Action dated December 9, 2004. Applicants respectfully request reconsideration of the above-mentioned application in view of the above Amendments and Remarks which follow.

Claims 1-9, 20-22, and 25-35 are pending in this application, all of which are presently rejected.

Claim Rejections 35 U.S.C. § 102A

The Examiner rejected claims 1, 2 and 4 under 35 U.S.C. § 102A as being anticipated by Armbruster U.S. Patent 6,374,447.

Armbruster shows in Figure 3, a battery housing 40 integral with the housing 32 which receives a stick battery 46 as indicated in Column 4 lines 15-21. This is contrary to Applicants invention which includes among other things a battery pack, as described below.

While Applicants believe that claim 1 was patentably distinct over Armbruster as filed, Applicants have modified claim 1 to better clarify the invention. As amended, claim relates to a hand held wash unit where the motor drive unit comprises a housing having an upper battery receiving cavity and lower motor receiving cavity. The upper battery receiving cavity forms an open cavity for receipt of a battery pack. The open cavity is shown best in figure 4 where the open cavity is defined by walls 36, 38 and where electric contacts 42 are shown positioned within the upper cavity and electrically connected to the motor. Claim 1 also indicates that the battery pack has a battery pack housing for receipt of at least one battery where the battery is electrically connected to battery contacts external of the battery pack housing. The battery contacts which are external to the housing are items 288a and 288b shown in figure 8. The battery pack is receivable in the upper cavity with the battery contacts in alignment with the motor contacts. The combination of the battery pack housing, the battery, and the battery contacts are removable as a unit for recharging. The

unitary battery pack is shown at 6 in Figure 3 and is shown in its recharging mode in figure 27.

Thus, claim 1 is not anticipated by Armbruster, and Applicants believe that claim 1 is in condition for acceptance. The Examiner indicated that Armbruster shows a battery pack having external contacts. It is unclear what the Examiner considers Armbruster's "battery pack" but Applicants believe that Armbruster neither shows a battery pack nor external contacts.

The Examiner also rejected claim 20 over Armbruster under 35 U.S.C. § 102A. Applicants also respectfully disagree with the Examiner's assessment of Armbruster as it relates to claim 20-22. First on page 3 of the Office Action, the Examiner indicated that Armbruster has a yoke having a locking mechanism cooperable between the yoke and the drive unit and having the plurality of locking positions. This is simply not disclosed as discussed below.

As disclosed in column 5 lines 31-58 and as shown in figures 6, 9 and 10, Armbruster's lock mechanism 76 has only one locked position. As shown in figures 6 and as described in column 5 of Armbruster, lock mechanism 76 has a stationary housing 100 with a slide lock 108 positioned within member 100. Member 100 has a slot 104 which receives a threaded locking knob 106 threadably engaging slide lock 108. A single projecting tongue 110 is provided such that when the slide lock 108 is slid to engage the tongue 108, a single locked position is disclosed. When not locked in the single locking position, the yoke is moveable between the extremes of 72-74. Thus, it is clear from Armbruster's disclosure that a single locked position is shown.

In claim 20, Applicants indicated that the yoke has a locking mechanism cooperable between the yoke and the drive unit where the locking mechanism has a plurality of locked positions locking the motor drive unit in a plurality of positions. This is shown and described in Applicants figure 5 and described in paragraphs 63-67 and shows multiple locked positions. For this reason, Applicants claim 20 is not anticipated by Armbruster who only shows a single locked position.

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The Examiner also rejected claims 25-30 under 35 U.S.C. § 102A as being anticipated by Armbruster. However, the Examiner fails to show all of the features in Armbruster to anticipate claim 25. Namely, Examiner fails to show a seal member positional between the battery pack and the housing for sealing the electrical contacts. This is because Armbruster does not show a battery pack, rather Armbruster shows a stick battery 46 positionable inside housing portion 40 which can be removed by removing cover 44. Thus, Armbruster does not show a seal intermediate the battery pack and contacts.

However, Applicants have amended claim 25 to indicate that the battery pack includes a battery housing which receives and encloses at least one battery where the battery housing and battery are removable from the housing as a unit. Once again Armbruster does not show a removable battery pack including a housing, rather Armbruster shows a battery stick within the integral motor housing where the battery stick is being removable.

Claim Rejections 35 U.S.C. § 103

The examiner also rejected claims 3, 5-8, 27, 29 and 31-34 under 35 U.S.C. § 103A as being unpatentable over Armbruster. With regard to claims 3 and 27 which indicate that the upper cavity is in alignment with the common axis such that the battery is installed along the common axis, the Examiner has taken official notice that battery pack design is well known in the art and that it would have been obvious to modify the battery pack disclosed in Armbruster to align with the common axis. Applicants believe that the Examiner's taking of official notice in this instance is without support and is erroneously applied.

MPEP § 2144.03 indicates that Examiners may take official notice of facts. In the instant case, no facts are being relied upon by the Examiner but rather the Examiner is taken the position that the intuitive knowledge of what is obvious to one of ordinary skill in the art is known. Applicants respectfully request the Examiner to produce a document which supports the official notice, as well as the obviousness of the modification.

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Examiner has also rejected claims 5-8, 28 and 31-34. Claim 5 indicates that the battery pack is comprised of a bi-partite housing comprising an upper housing and lower housing, the bi-partite housing including battery positioning walls therein and three batteries positioned therein. Claim 6 indicates that the switch is intermediate the serial connection. Claim 7 indicates that the switch is installed in the battery pack. Claim 8 indicates that the battery pack is comprised of a housing member having an upper and lower surface where battery contacts are positioned on the lower surface, and are receivable within the upper cavity. The switch is positioned within the upper cavity, and is positioned within the switch housing member and the battery pack and further comprises an actuator for actuating the switch the actuator extending through the upper surface of the housing member.

Once again the Examiner takes official notice that claims 5-8 are obvious alterations of the basic battery powered hand held washing unit disclosed by Armbruster. Once again Applicants believe that the Examiner's taking of official notice is misplaced and in error and that the Examiner is not taking official notice of facts but rather of what may or may not be obvious to one of ordinary skill in the art. If it is obvious to modify the Armbruster device then the Examiner is requested to show prior art or other documents that explain such devices as disclosed in claims 5-8 and explain why in combination with Armbruster claims 5-8 are obviated.

For all the reasons outline above, Applicants believe that claims 1-9; 20-22, and 25-35 are in condition for allowance, and respectfully request early passage thereof.

If necessary to effect a timely response, please consider this paper a request for an extension of time, and charge any shortages in fees, or apply any overpayment credits, to Baker & Daniels' Deposit Account No. 02-0387 (72063.10011). However, please do not include the payment of issue fees.

Respectfully submitted,

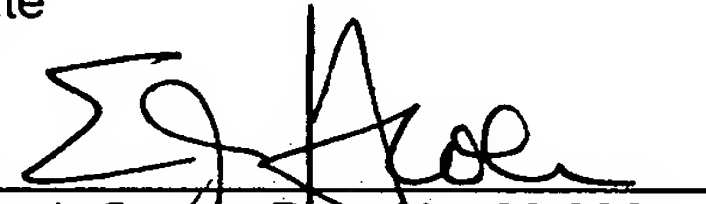
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